S.B. CIVIL WRIT PETITION NO.431/2005

Deraj Ram and others
vs.
Adyaksh, Gram Sewa Sahakari Samiti Ltd., Undu and ors.

Date : 20.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. R.K. Soni, for the petitioner.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the orders passed by two courts below, namely, order dated 22.4.2003 by which the trial court allowed the temporary injunction application filed by plaintiffs/respondents and directed both the plaintiffs and defendants to maintain status quo with respect to the property in dispute and against the appellate order dated 28.8.2004 by which the petitioners' appeal was dismissed.

According to learned counsel for the petitioners, the plaintiffs' alleged property is situated about 1000 feet away from the land in dispute. The plaintiffs have no right, title or interest over the property in dispute. The plaintiffs are not in possession of the property in dispute. The plaintiffs produced a document (Annex.5) purported to have been containing the thumb impression of Up-Sarpanch of Gram

Panchayat but that document is a forged document and that has been proved by the affidavit of Up-Sarpanch, copy of which is placed on record as Annex.6 and was filed before the trial court. It is also submitted that since the plaintiffs are not in possession of the property, therefore, no injunction can be granted.

Learned counsel for the petitioners vehemently submitted that in view of the fraud committed by the plaintiffs in obtaining the document Annex.5, the plaintiffs are not entitled for any relief and fraud vitiates all as held by the Supreme Court in the case reported in 1996(4) SCC

Learned counsel for the petitioners submitted that the courts below have wrongly relied upon the Commissioner's report and misread the same. Learned counsel for the petitioners also submitted that during the pendency of the suit, the petitioners obtained patta for the land in question and the petitioners got permission to raise construction from Gram Panchayat on 26.1.2003 for which the copy was issued to the petitioner on 10.3.2003 (Annex.7).

I have considered the submissions of the learned counsel for the petitioners and have perused the reasons given in the impugned orders by the courts below.

It is clear from the facts mentioned above itself that there is a serious dispute about the immoveable

property and the plaintiffs as well as the defendants are claiming their right, title and interest over the property in dispute. The plaintiffs have filed the suit not only for mere injunction but also sought a relief of possession in the suit and according to learned counsel for the petitioners, subsequently, the plaintiffs have paid the court fees also for the relief of possession.

In view of the above, the plea raised by learned counsel for the petitioners that the injunction cannot be granted in favour of the person who is not in possession, has no application to the facts of the case.

The document Annex.5, which is said by the petitioners to be forged as obtained by misrepresentation, is the subject matter which can be decided by the trial court after the evidence of the parties and it is to be seen whether the said document was obtained by misrepresentation or deponent has submitted the affidavit on win-overing by any party. The courts below very carefully not only considered but formulated the points involved in the suit and thereafter held that there is a prima-facie case in favour of the plaintiffs and thereafter, passed an order to maintain status quo.

In these facts and circumstances of the case, when findings of fact have been recorded by the courts below after appreciating all the facts of the case and recorded that the suit involves serious disputed

questions of fact and passed the order to maintain status quo with respect to the property, the orders, therefore, do not call for interference by this Court in its writ jurisdiction.

The contention of the learned counsel for the petitioner that the order is without jurisdiction is having no legal foundation at all and deserves to be rejected in view of the fact that the contention of the petitioners is based on assumption that simply because there is allegation of defects in the suit or frame of the suit, the Court looses its jurisdiction.

In view of the above, this writ petition, having no merit, is hereby dismissed.

At this stage, learned counsel for the petitioners submits that the trial court be directed to decide the suit expeditiously.

No direction is needed in view of the amendments made in C.P.C. and the Court may frame its own timetable to decide the suit expeditiously pending before it and the petitioner cannot be given priority because he has approached this Court.

(PRAKASH TATIA), J.

S.Phophaliya